2014 IL App (2d) 131226-U
No. 2-13-1226
Order filed July 29, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF STERLING McCULLOUGH, Petitioner-Appellant, and JOAN McCULLOUGH, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Kane County. No. 11-D-645 Honorable Rene Cruz, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in partially granting respondent's motion to reconsider. Affirmed.

¶ 2 Petitioner, Sterling McCullough, brought a divorce action against respondent, Joan McCullough. In its dissolution order, the trial court awarded respondent a portion of petitioner's previously-earned employment bonuses and stock options. The court also awarded respondent $2,500 in monthly rehabilitative maintenance for 24 months. Upon respondent's motion to reconsider, the court awarded respondent a portion of future bonuses and stock options that petitioner may receive during the 24-month maintenance term. Petitioner appeals, arguing that

the trial court erred by effectively awarding respondent additional maintenance without consideration of any newly discovered evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties married on August 4, 2001. Petitioner, age 53, filed a petition for dissolution of marriage on May 9, 2011. On July 26, 2011, the court issued an agreed temporary maintenance order, which ordered petitioner to pay to respondent, age 59, $3,167 per month. The court also ordered petitioner to pay to respondent a portion of any bonuses he received during the temporary period, to be paid within seven days of receipt.

¶ 5 Trial occurred on May 9 and 10, 2013.[1] Petitioner began working for his current employer, Opera Solutions, in December 2010. Petitioner's offer letter from Opera Solutions, exhibit No. 1, explained petitioner's eligibility for pro-rated discretionary performance bonuses. Petitioner testified that, due to a business downturn, his bonuses were going to cease. However, petitioner admitted to receiving $97,500 in bonuses in 2011 and 2012, which he purposefully failed to pay to respondent.

¶ 6 Additionally, several exhibits documented a prior award of stock options (in June and July 2011) to petitioner pursuant to the company's stock option plan. During trial, petitioner testified that he was partially vested in the options.

¶ 7 On July 17, 2013, the trial court issued its dissolution order, awarding respondent 50% of petitioner's previously awarded stock options (and requiring that petitioner exercise them as soon as they became fully vested and tender 50% of the value to respondent). Again, the court

[1] Only the second day of trial was transcribed.

awarded respondent $2,500 per month (for 24 months) in rehabilitative maintenance and "forever banned" petitioner from receiving maintenance.[2]

¶ 8 Respondent moved to reconsider, arguing that the trial court overlooked the fact that petitioner may receive bonuses or stock options in the future (specifically, during the maintenance term) because no evidence at trial suggested otherwise. According to respondent, petitioner's testimony about no longer receiving bonuses was not credible; petitioner's employment contract (awarding bonuses) was never modified; and petitioner suggested that he may receive future stock option awards and never suggested that stock options would replace any bonuses. Respondent claimed that the court's errors were contrary to the maintenance statute, and she requested that the court reconsider and award her a portion of any bonuses or stock options that petitioner might receive during the maintenance period.

¶ 9 Petitioner responded that, due to the marriage's relatively short duration, respondent was not entitled to any future stock options. Further, petitioner argued that respondent did not ask for any future stock options at trial and, therefore, forfeited the request. Additionally, petitioner noted that he testified at trial that bonuses were discretionary under his employment contract and that they were going to cease. Finally, petitioner argued that the trial court did not have to specifically deny any bonus award, because it was encompassed in the overall maintenance award. Awarding respondent any portion of future stock options or bonuses, he asserted, would be an unwarranted award of additional maintenance.

¶ 10 On October 23, 2013, the trial court partially granted respondent's motion to reconsider, finding that there was nothing suggesting that newly-earned bonuses or stock option awards

[2] The court further found that there were no current discretionary bonus draws available to petitioner.

could not be awarded to petitioner. The court "amended" its dissolution judgment to award respondent 45% of any future bonuses or stock options that petitioner may receive during the maintenance term. It denied the remainder of respondent's motion. Petitioner appeals.

¶ 11 II. ANALYSIS

¶ 12 Petitioner contends that, by awarding respondent future bonuses or stock options that he may possibly receive during the maintenance term, the trial court effectively increased respondent's maintenance award based on evidence already introduced at trial, and no newly discovered evidence was presented to warrant reconsideration of the trial court's decision. For the following reason, we disagree.

¶ 13 On a motion to reconsider, a party is permitted to bring to the trial court's attention: (1) newly discovered evidence; (2) changes in the law; or (3) errors in the court's prior application of existing law. *General Motors Acceptance Corp. v. Stoval*, 374 Ill.App.3d 1064, 1078 (2007). Generally, a trial court's ruling on a motion to reconsider will not be overturned absent an abuse of discretion. *Chelkova v. Southland Corp.*, 331 Ill. App. 3d 716, 729 (2002). However, when a motion to reconsider is based solely on the court's application or purported misapplication of existing law, the standard of review is *de novo*. *Bank of America, N.A. v. Ebro Foods, Inc.*, 409 Ill. App. 3d 704, 709 (2011).

¶ 14 Petitioner argues that the court had no newly discovered evidence available to serve as a basis for granting the motion to reconsider. Petitioner is correct that, if respondent's motion to reconsider attempted to rely on newly discovered evidence, there may be reason to reverse the trial court's decision. See, *e.g.*, *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 411 (2005). In this instance, however, petitioner is misguided. Newly discovered evidence is but one of three alternative bases upon which a court may grant a motion to reconsider. *Koczor v. Melnyk*, 407

Ill. App. 3d 994, 1002 (2011). Here, respondent argued in her motion to reconsider that the trial court erred in its application of the *law*. Specifically, the trial court acted contrary to the maintenance statute, which states that, "the court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just," and the court must consider all relevant factors, including, but not limited to "the present and future earning capacity of each party." 750 ILCS 5/504 (West 2012). Here, because the court initially (in its dissolution order) failed to consider relevant evidence concerning petitioner's potential future earning capacity, the court acted contrary to the statute. As such, the court properly reconsidered its ruling.

¶ 15 III. CONCLUSION

¶ 16 For the reasons stated, the judgment of the circuit court of Kane County is affirmed.

¶ 17 Affirmed.